

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
Title 3, California Code of Regulations  
Section 3406(b), Mediterranean Fruit Fly Interior Quarantine  
INITIAL STATEMENT OF REASONS/  
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3406(b) is to provide for the State to regulate the movement and possible carriers of Mediterranean fruit fly (Medfly) from the area under quarantine to prevent the artificial spread of the Medfly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3406(b) was necessary is as follows:

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

#### Amendment Effective October 29, 2007

Mediterranean fruit flies were recently detected in the County of Los Angeles. On October 24, 2007, an adult mated female Mediterranean fruit fly was taken from a trap in the Rancho Palo Verdes area of Los Angeles County. On October 24, 2007, two mated and one unmated adult female Mediterranean fruit flies were taken from a trap in the Rolling Hills area of Los Angeles County. The detection of four adult Mediterranean fruit flies was indicative of an incipient infestation of the fly in these areas of Los Angeles County.

This amendment established a quarantine area in Los Angeles County of approximately 57 square miles surrounding the Mediterranean fruit fly infestation in the Rancho Palo Verdes and Rolling Hills areas of Los Angeles County.

#### Amendment Effective November 6, 2007

Mediterranean fruit flies were recently detected in Los Angeles County. On October 24, 2007, an adult mated female Mediterranean fruit fly was taken from a trap in the Rancho Palo Verdes area of Los Angeles County. On October 24, 2007, two mated and one unmated adult female Mediterranean fruit flies were taken from a trap in the Rolling Hills area of Los Angeles County. The detection of four adult Mediterranean fruit flies was indicative of an incipient infestation of the fly in these areas of Los Angeles County. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for a quarantine response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

As a result, effective on October 29, 2007, a new regulated area was established in Los Angeles County for Mediterranean fruit fly (Office of Administrative Law File #07-1026-04 E). The quarantine area included the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the local United States Department

of Agriculture (USDA), the California Department of Food and Agriculture, and the Los Angeles County Agricultural Commissioner.

The USDA subsequently notified our international trading partners via notification letters, of the quarantine, including the 4-1/2 mile buffer areas surrounding each Mediterranean detection sites. It was also determined that a small part of the Port of Los Angeles fell within the buffer area but had been left out of the original approved boundary. A subsequent investigation by local USDA and Department staff determined that Mediterranean fruit fly host commodities are imported and exported through this currently unregulated area. As a result, the USDA notified the Department it was necessary to include this additional area of the Port of Los Angeles to ensure we meet accepted risk protocols already communicated to our international trading partners.

This amendment added approximately two square miles of the Port of Los Angeles area to the regulation for a total of approximately 59 square miles.

#### Amendment Effective November 27, 2007

On November 14, 2007, one unmated female Mediterranean fruit fly was taken from a trap in the Torrance area of Los Angeles County. On November 15, 2007, two adult mated female Mediterranean fruit fly were taken from two separate traps in the Palos Verdes Estates area of Los Angeles County. On November 15, 2007, one unmated adult female Mediterranean fruit fly was taken from a trap in the Rolling Hills Estates area of Los Angeles County. On November 17, 2007, one adult male Mediterranean fruit fly was taken from a trap in the Rolling Hills Estates area of Los Angeles County. The detection of five additional adult Mediterranean fruit flies is indicative of an incipient infestation of the fly in these additional areas of Los Angeles County.

This amendment expanded the existing quarantine area (approximately 59 square miles) in Los Angeles County by approximately 13 square miles to the north and southeast, including

an additional portion of the Port of Los Angeles. The total regulated area is now approximately 72 square miles.

#### Amendment Effective December 10, 2007

On November 26, 2007, one mated female Mediterranean fruit fly was taken from a trap in the Lomita area of Los Angeles County. On November 29, 2007, one adult mated female Mediterranean fruit fly was taken from a trap in the Palos Verdes Estates area of Los Angeles County. On December 1, 2007, one mated adult female Mediterranean fruit fly was taken from a trap in the Wilmington area of Los Angeles County. The detection of three additional mated adult female Mediterranean fruit flies is indicative of an incipient infestation of the fly in these additional areas of Los Angeles County.

This amendment expanded the existing quarantine area (approximately 72 square miles) in Los Angeles County by approximately 25 square miles to the north, east and southeast, including an additional portion of the Port of Los Angeles. The total regulated area is now approximately 97 square miles.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The proposed quarantine area for the Rolling Hills area of Los Angeles County includes the initial detection sites as epicenters and a buffer zone which extends approximately 4-1/2 miles in each direction from each epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary lines were drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Solano County Agricultural Commissioner. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Mediterranean fruit fly to noninfested areas.

The Mediterranean fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

These amendments established a total quarantine area in Los Angeles County of approximately 97 square miles surrounding the Mediterranean fruit fly infestation in the Rolling Hills area of Los Angeles County. To prevent artificial spread of the fly to noninfested areas to protect the California's agricultural industry, it was necessary immediately to regulate movement of hosts which can carry the fly within and from the infested area and surrounding buffer zone. Therefore, it was necessary to amend Section 3406(b) on an emergency basis.

#### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioner of Los Angeles County requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or

savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

No business has gone out of business due to any Medfly quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Medfly expenditures by State and Federal governments.

The Department has identified approximately two conventional growers within the quarantine area. Host fruit from growers outside the core area (a one mile area surrounding the infested sites) may be treated with Malathion or Spinosad bait spray before it can be moved. The ground application Malathion spray costs are approximately \$0.54 per acre for product with approximately 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense.

Within the quarantine area, the Department has identified 209 fruit sellers/vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to Medfly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

There are 52 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs.

The Department has identified approximately nine farmers' markets/swap meets in the area under quarantine. Businesses selling host produce at these locations must maintain the quarantine commodities in a manner that precludes exposure to Medfly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

Within the quarantine area, the Department has identified 32 yard maintenance businesses that must safeguard all host fruit being removed from properties within the quarantine area by placing it in plastic bags for disposal at a landfill. The plastic bags are inexpensive and there is no extra material for disposal at a landfill, as it would have been removed anyway.

Based on the above information, it was determined that the amendment of Section 3406(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are relatively low.

### Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3606(b):

“Annual Estimated Economic Impact- Rolling Hills Area, Los Angeles County, Mediterranean Fruit Fly Interior Quarantine,” dated January 7, 2008, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

“Establishments Affected by the Mediterranean Fruit Fly Interior Quarantine, Rolling Hills Area, Los Angeles County,” dated January 7, 2008, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

“Annual Estimated Fruit Fly Quarantine Costs,” dated November 26, 2007, Plant Health and Pest Prevention Services, Permits and Regulations, California Department of Food and Agriculture.

Email dated January 4, 2008, from Nawal Sharma to Courtney Albrecht, Stephen Brown and Casey Estep, and its attachment.

Email dated January 4, 2008, from Casey Estep to Courtney Albrecht, Stephen Brown and Nawal Sharma, and its attachment.

Email dated November 19, 2008, from Kurt Floren to Courtney Albrecht and Casey Estep.

Letter dated October 25, 2007, to A.G. Kawamura, Secretary, from Kurt E. Floren, Los Angeles County Agricultural Commissioner.

“Pest and Damage Record #1442941,” dated December 1, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442939,” dated November 29, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.



“Pest and Damage Record #1442938,” dated November 26, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442937,” dated November 17, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442936,” dated November 15, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442935,” dated November 15, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442934,” dated November 14, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442929,” dated October 24, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Pest and Damage Record #1442928,” dated October 24, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Mediterranean Fruit Fly Action Plan,” dated December, 2003, United States Department of Agriculture, Plant Protection and Quarantine.